

PLANNING COMMISSION REPORT



MEETING DATE: February 9, 2005

ITEM No. _____ GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT

Shadey O's - 38-UP-2004 and 39-UP-2004

Request to approve conditional use permits for a bar and live entertainment.

Key Items for Consideration:

- Shadey O's has operated at the site for about 3-1/2 years. No history of neighborhood or police complaints.
- Shadey O's received two Notice of Violations for karaoke (live entertainment) without a use permit.
- No outdoor patio/outdoor playing of music.

OWNER

Herberger Enterprises, Inc.
480-945-2681

APPLICANT CONTACT

Charles Misfeldt
CCB Restaurants, LLC
480-946-4508

LOCATION

10893 N Scottsdale Rd



BACKGROUND

Zoning.

The site is zoned Highway Commercial (C-3). The district allows for bars and live entertainment with approval of a use permit.

Context.

Shadey O's occupies a suite within the Shea Scottsdale Shopping Center, located at the northeast corner of Scottsdale Road and Shea Boulevard. The zoning surrounding the site includes C-2 to the north and east, single family R1-35 to the northeast, and C-3 zoning to the south and west. The closest residential lot is located about 330 feet to the northeast.

APPLICANT'S PROPOSAL

Goal/Purpose of Request.

Shadey O's has been operating at the site for about 3-1/2 years with a No. 12 liquor license. Based on the amount of liquor sales, the state liquor licensing board is requiring a No. 6 liquor license for the bar to continue to operate. Shadey O's continues to operate with an interim No. 12 license. With the processing of a No. 6 liquor license, the City is requiring approval of a bar use permit.

Shadey O's has operated with karaoke activities (defined as live entertainment in the zoning code) without a live entertainment use permit, and has received two notices of code violations from the City (dated June and September 2004).

The new owner of Shadey O's would like to continue live entertainment activities, and is seeking approval of a live entertainment use permit.

Development information.

- *Existing Site:* Shopping Center
- *Parcel Size:* 16.7 acres
- *Parking:* 567 spaces required, 803 provided.

IMPACT ANALYSIS

Traffic.

The site is located at the intersection of two major arterial streets, Scottsdale Road and Shea Boulevard. These streets can accommodate the traffic that is anticipated to be generated by the bar and live entertainment uses, which is heaviest during off-peak hours. There also is not expected to be a significant increase in site-generated traffic over existing conditions with the approval of this use permit request.

Police.

The Police Department has reviewed and approved the Security and Maintenance Plan for the Shadey O's operation.

Use Permit Criteria.

Conditional use permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted after the Planning Commission has made a recommendation and the City Council has found as follows:

- A. That the granting of such conditional use permit will not be materially detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:
 1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
 - *Shadey O's has been in operation approximately 3-1/2 years and has had no adverse impacts to date. The applicant has agreed to keep all doors shut during normal business hours to control noises. Shadey O's includes no outdoor patio, and music will not be played outdoors.*
 2. Impact on surrounding areas resulting from an unusual volume or character of traffic.
 - *The use will not create peak traffic volumes that are out of character for the surrounding commercial area.*
 3. There are no other factors associated with this project that will be materially detrimental to the public.
 - *No adverse factors have been identified.*
- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.
 - *The intersection of Scottsdale and Shea includes many other commercial uses including bars and restaurants. Within the subject shopping center, there is one other bar, Devil's Martini. Nearby*

residential uses to the northeast are buffered from the shopping center by a solid masonry wall and a city street.

C. The additional criteria specified in Section 1.403, as applicable, are itemized below.

1. Use will not disrupt existing balance of daytime and nighttime uses.

The existing uses at the subject center are a mix of daytime and nighttime uses, including salons, a postal service, grocery store, floral shop, restaurants, vitamin store, pharmacy, dry cleaner's bank, and another bar. Shadey O's has not created disruption to the balance of uses in the center since it began operating. The live entertainment use is limited to the evening hours, when many of the other shops and services are closed.

2. Use will not disrupt pedestrian oriented daytime activities.

The bar use is fully enclosed, and is not expected to cause any disruptions to surrounding outdoor pedestrian activities.

3. Use will not encourage displacement of daytime retail uses unless it can be demonstrated that the proposed use will promote diversity of first floor uses along the street.

The existing shopping center currently has a successful mix of daytime and nighttime uses. The continued use of Shadey O's within the shopping center should have no impact on the viability of the current daytime retail uses.

4. An active management and security plan shall be implemented and maintained for the business.

The applicant has completed a Security and Maintenance Plan, which has been approved by the Police Department.

5. Use shall not adversely impact existing adjacent properties for residential uses.

There are no immediately adjacent residential uses to Shadey O's. The closest residential uses are single-family residential lots located at the nearest point about 330 feet to the northeast. There should be no adverse impact to residential uses because Shadey O's is fully enclosed and separated from residential uses by a solid masonry wall, parking lot and city street.

6. Applicant shall demonstrate how noise and light generated by the use will be mitigated.

The applicant provided a noise statement that describes Shadey O's as a sports bar type of establishment. The applicant has agreed to closing doors to the outside during business hours.

The applicant is proposing no new lighting.

7. Applicant shall demonstrate that the use will not exceed capacity for parking and traffic in the area.

Trip generation information was provided with the application and was reviewed by Transportation Department staff. The

proposed use is not anticipated to have an impact on the adjacent street system.

The applicant provided a parking analysis for the overall shopping center. The shopping center exceeds the number of parking spaces required by the zoning code (567 spaces required, 803 provided).

8. Required parking for the use shall be within 600 feet of the property and shall not be separated from the property by an arterial street.

All required parking for the establishment is located within 600 feet of the site.

9. After Hours Establishments must maintain a valid after hours establishment license.

The applicant is not proposing any after hours with this application.

10. Live Entertainment Use Permit submittal requirements have been met.

The applicant provided a site plan, noise information, lighting information, refuse control plan, floor plan, and Security Maintenance Plan with their application.

Community Involvement.

The applicant mailed a letter with information about their use permit applications to property owners located within 300 feet of the Shadey O's. The applicant also posted a sign on the property prior to public hearings. The applicant reported that one tenant in the shopping center called to get more information and was not opposed to the use. The City provided postcards to property owners located within 300 feet of the use several days after application submittal and prior to public hearings. Staff has received no comments from the public regarding the use.

Community Impact.

Shadey O's has a multiple-year track record that indicates no negative community impact from the use.

STAFF
RECOMMENDATION

Recommended Approach:

Staff recommends approval, subject to the attached stipulations.

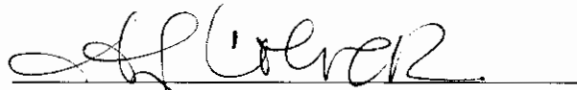
RESPONSIBLE
DEPT(S)

Planning and Development Services Department
Current Planning Services

STAFF CONTACT(S)

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Senior Planner
480-312-7087
E-mail: scolver@ScottsdaleAZ.gov

APPROVED BY



Suzanne Colver
Report Author



Kurt Jones, AICP
Director, Current Planning

ATTACHMENTS

1. Applicant's Narrative
2. Context Aerial
- 2A. Aerial Close-Up
3. Land Use Map
4. Zoning Map
5. Stipulations for 38-UP-2004
- 5A. Stipulations for 39-UP-2004
6. Citizen Involvement
7. City Notification Map
8. Security and Maintenance Plan
9. Trip Generation Information
10. Floor Plan

PART 1 - GENERAL REQUIREMENTS

7. PROJECT NARRATIVE (PLEASE ADDRESS THE ATTACHED CRITERIA IN THE ZONING CODE, SECTION 1.403,d. 1-9)

Project Narrative

Background: Shadey O's premises was previously a Top Shelf Mexican Restaurant operated by Arizona Pizza Company from 1980 to 2001. Arizona Pizza Company sold the premises to Jimmike, LLC, who closed the Top Shelf and reopened as Shadey O's. Arizona Pizza Company remained as a guarantor on the lease. Jimmike, LLC was unable to maintain the 40% food sales required by the State Liquor Dept. Jimmike's No. 12 liquor license was being revoked. Herberger Enterprises, Inc. defaulted the Jimmike LLC lease August 1, 2004. The Arizona Pizza Company lease was reestablished with CCB Restaurants, LLC dba Shadey O's. CCB, LLC made application for a new No. 12 liquor license and the transfer of a No. 6 liquor license; and was granted an interim No. 12 permit to operate Shadey O's while the licenses were being processed.

Description of Request: CCB Restaurants, LLC needs to obtain a bar use permit and a live entertainment use permit to be able to continue to operate Shadey O's. The bar use permit will enable Shadey O's to have a No. 6 liquor license. A No. 6 liquor license is a requirement of the Arizona State Liquor Department since Shadey O's food sales fell below 40% of Gross Sales.

Live Entertainment: At the present time Shadey O's only has Karaoke Tuesday & Thursdays, the hours are from 9:00 pm to 1:00 am. CCB Restaurants, LLC wants to reserve the right to have live entertainment Thursday, Friday, Saturday and Special Occasions. Hours would be 9:00 pm to close, which will be 1:00 am with exception of Special Occasions, when closing would be 2:00 am. The types of entertainment would be a D.J., band, or a comedy act.

Shea Scottsdale Shopping Center has security provided by Noreast Security Agency, Inc. 2:30pm through 6:00 am. Shadey O's also has a uniformed security on nights of entertainment from 9:00 pm to close. Shadey O's has security 9:00 pm to close regardless of entertainment on Friday & Saturday nights. All litter is removed by 7:00 am, 7 days a week by Barrys Full Service, Inc.

The following are responses to the Sec. 1.403,D. requirements:

1. Shadey O's doesn't disrupt the existing balance of daytime and nighttime uses.
2. Shadey O's has no adverse affect on the daytime or nighttime activities in the area.
3. The site is not in the downtown overlay district. It is the NEC of Scottsdale Road and Shea Boulevard.

A) Shadey O's hasn't created any disruptions to the adjacent tenants at the Scottsdale/Shea shopping center.

4. Shadey O's is not within 500 feet of residential.
5. There is an active management and security plan in effect at the Shea/Scottsdale shopping center. (See attached).
6. Shea/Scottsdale has existing refuse control.
7. Shadey O's premises is the west end cap of building A and there are no outside speakers. Shadey O's adds no additional light to the exterior and all noise is contained within the premises.
8. Shadey O's meets the parking requirements and will not exceed the capacity for traffic in the area.
9. Shadey O's does not operate after hours.



Shady O's

38-UP-2004 & 39-UP-2004

ATTACHMENT #2

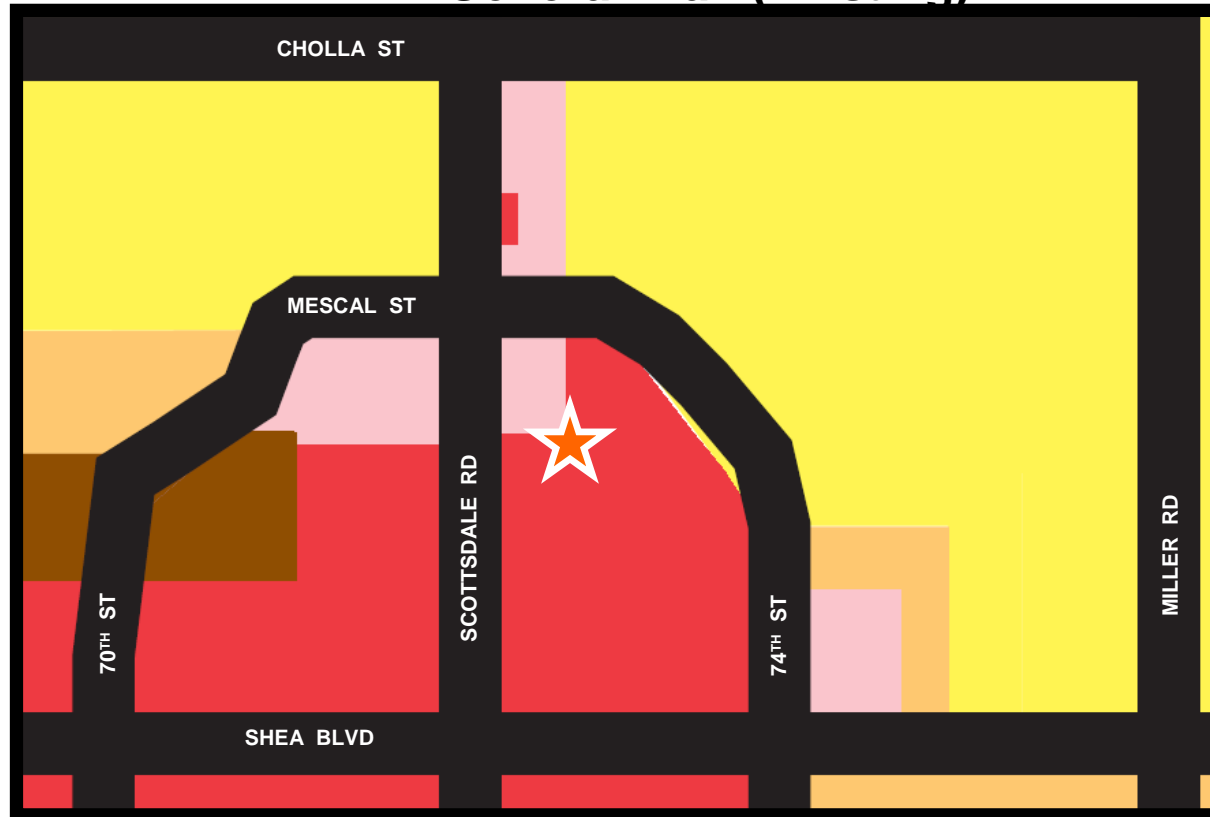


Shady O's

38-UP-2004 & 39-UP-2004

ATTACHMENT #2A

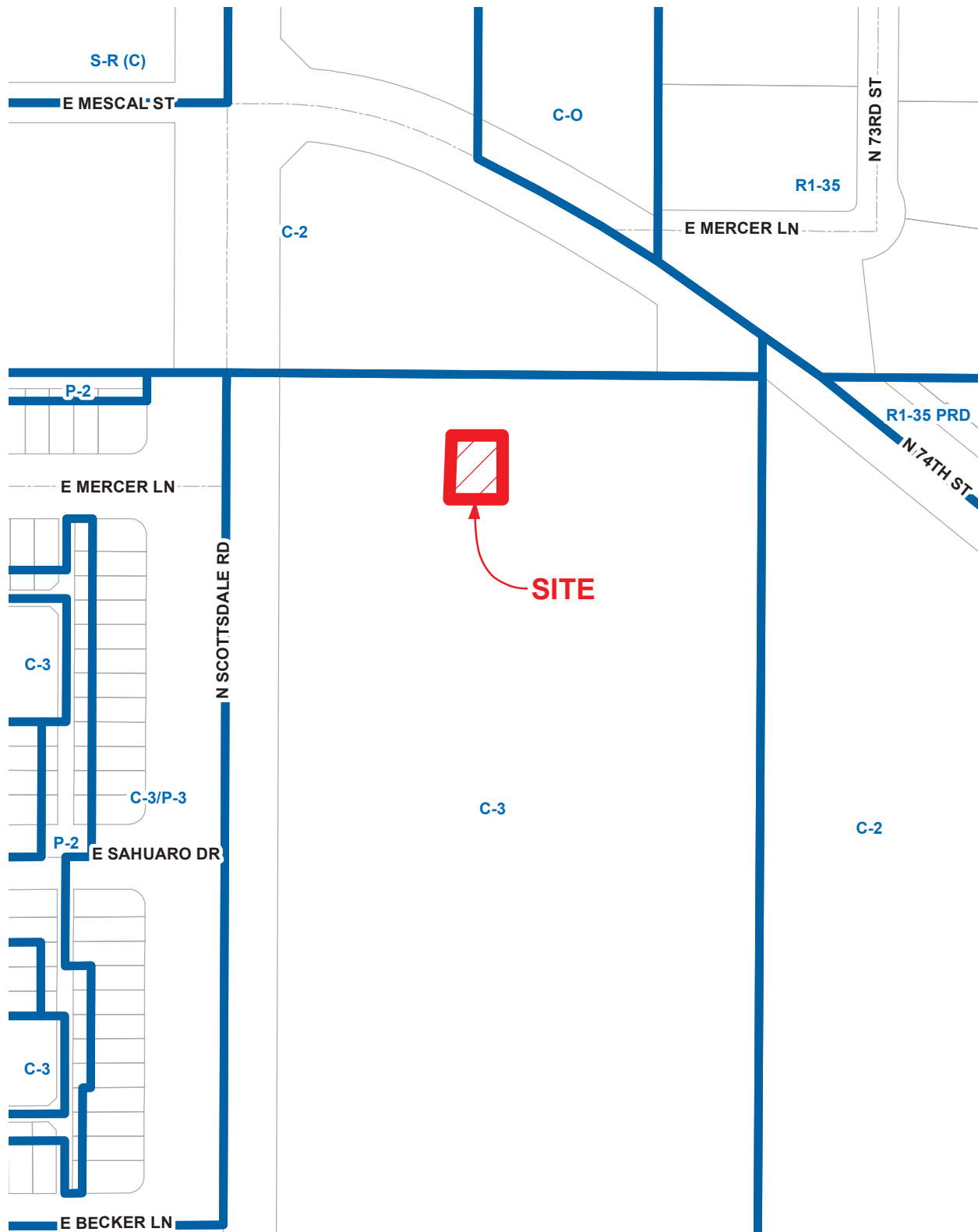
General Plan (Existing)



**38-UP-2004 &
39-UP-2004**

ATTACHMENT #3

Adopted by City Council October 30, 2001
Ratified by Scottsdale voters March 12, 2002
revised to show McDowell Sonoran Preserve as of May 2004
revised to reflect General Plan amendments through June 2004



38-UP-2004 / 39-UP-2004

ATTACHMENT #4

STIPULATIONS FOR CASE 38-UP-2004

PLANNING/ DEVELOPMENT

1. OPERATIONS. All operations on site shall comply with the following:
 - a. Live Entertainment. Live Entertainment is not approved with this bar use permit. Any use permit for live entertainment is by separate use permit approval.
 - b. Noise/Sound.
 - (1) Unless otherwise approved by the City in association with a Special Event or other type of application, the following noise/sound conditions shall apply.
 - (2) Amplified music shall not be heard or have measurable noise emitted past the property line.
 - (3) No external speakers shall be permitted.
 - (4) All external doors shall remain closed, but not locked during operating hours.
 - (5) There shall be no amplified music during the times that state law does not allow liquor sales at this bar.
 - c. Maintenance and Security Plan.
 - (1) The bar operator(s) / merchant(s) shall maintain a Public Security and Maintenance Plan approved by the Scottsdale Police Department on record with the City of Scottsdale and shall keep a copy on site.
 - (2) Each year, ten (10) days prior to the anniversary of this use permit approval, the bar owner shall provide an update of the Maintenance and Security Plan to the Police Department and the Planning and Development Services Department. Such update shall state that the Plan continues in effect as originally approved, or the update shall conform to #3 below.
 - (3) At any time that there are any changes that modify the requirements or contents of the Public Security and Maintenance Plan, those changes shall be documented in a revised Public Security and Maintenance Plan which shall be subject to approval by the Police Department, in conjunction with Staff Approval by the Planning and Development Services Department.
 - (4) All operations of the bar shall conform to the Public Security and Maintenance Plan as approved.
 - d. Refuse and Litter Control.
 - (1) The bar operator(s) / merchant(s) shall maintain a refuse and litter control plan approved by the City of Scottsdale's Planning and Development Services Department and applicable departments on record with City of Scottsdale and keep a copy on site.
 - (2) All operations of the bar shall conform to the refuse control plan with a City staff receipt date of 12/7/2004.
 - (3) The bar operator(s) / merchant(s) shall remove litter and debris from the property and properly dispose of daily.

STIPULATIONS FOR CASE 39-UP-2004

PLANNING/ DEVELOPMENT

1. **CONFORMANCE TO SUBMITTAL.** The applicant shall operate in conformance with the submitted floor plan, noise plan, refuse plan, and lighting plan, all with a City staff receipt date of 12/7/2004.
2. **NOISE/SOUND.** Unless otherwise approved by the City in association with a Special Event or other type of application, the following noise/sound conditions shall apply.
 - (1) Amplified music shall not be heard or have measurable noise emitted past the property line.
 - (2) No external (outdoor) speakers shall be permitted.
 - (3) All external doors shall remain closed, but not locked during operating hours.
 - (4) There shall be no amplified music during the times that state law does not allow liquor sales at this bar.
3. Live entertainment shall be allowed only between the hours of 6pm to 11pm Sunday through Thursday, and between 6pm to 4am on Friday and Saturday.
4. No testing of sound equipment shall occur between the hours of 9am and 5pm on any given day.
5. If patrons are standing in line for entry into the building, the line must form east of the front doors.
6. All doors must remain closed during hours of live entertainment.
7. Outdoor clean up shall include all street, sidewalk, and storefront areas as indicated in the refuse control plan, with a City receipt date of 12/7/2004.
8. At a minimum, on a monthly basis by the 5th day of the month, the owner/operator shall provide the Police Department with a written schedule of events, times, and type of activity proposed for the live entertainment use.

NEIGHBORHOOD INVOLVEMENT — Response

There has only been one response from the Neighborhood Involvement mailer that was sent to all business' located within the 300' radius of Shadey O's. There is no residential or Home Owner's Association within the Shadey O's area.

The one response was from Fred, who operates Cactus Flowers. His response was positive for Shadey O's. His primary interest was how I was involved with Shadey O's.

NEIGHBORHOOD INVOLVEMENT — Business' Located 300' from Shadey O's

Wells Fargo Bank
10921 N Scottsdale Rd
Scottsdale, AZ 85254

Oreck
10893 N Scottsdale Rd, #107-109
Scottsdale, AZ 85254

Posters Mostly
10893 N Scottsdale Rd, #111
Scottsdale, AZ 85254

Lazar Salon
10893 N Scottsdale Rd, #113
Scottsdale, AZ 85254

Audible Hearing Center
10893 N Scottsdale Rd, #115
Scottsdale, AZ 85254

Sports Clips
10893 N Scottsdale Rd, #117
Scottsdale, AZ 85254

Guido's Deli
10893 N Scottsdale Rd, #119-121
Scottsdale, AZ 85254

For Nails Only
10893 N Scottsdale Rd, #125
Scottsdale, AZ 85254

Glitter & Gold
10893 N Scottsdale Rd, #1
Scottsdale, AZ 85254

Herberger Enterprises
10881 N Scottsdale Rd, #200-203
Scottsdale, AZ 85254

Big League Dugout
10869 N Scottsdale Rd, #107
Scottsdale, AZ 85254

Arizona Art Supply
10869 N Scottsdale Rd, #105
Scottsdale, AZ 85254

Postnet
10869 N Scottsdale Rd, #103
Scottsdale, AZ 85254

Mureeza Salon
10869 N Scottsdale Rd, #101
Scottsdale, AZ 85254

Piano Gallery
10821 N Scottsdale Rd, #101
Scottsdale, AZ 85254

*Loan Star Steakhouse
11055 N Scottsdale Rd
Scottsdale, AZ 85254

*SYNLAWN
11015 N Scottsdale Rd, #100
Scottsdale, AZ 85254

*Nuevo Southwest, Inc.
11011 N Scottsdale Rd
Scottsdale, AZ 85254

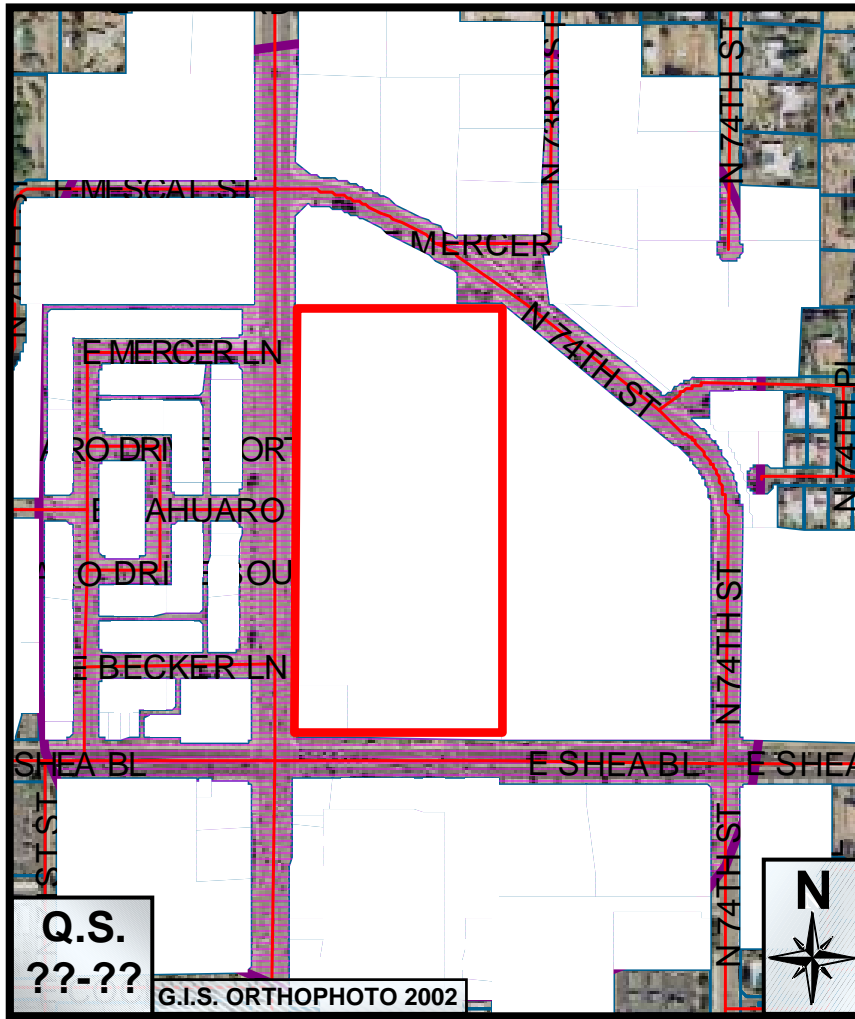
*Active Body
11830 N Scottsdale Rd, #100
Scottsdale, AZ 85254

*Cactus Flower Florists
11822 N Scottsdale Rd
Scottsdale, AZ 85254

*Devil's Martini
11825 N Scottsdale Rd
Scottsdale, AZ 85254

Scottsdale Police
10893 N Scottsdale, Rd, #129
Scottsdale, AZ 85254

City Notifications – Mailing List Selection Map



Map Legend:



Site Boundary



Properties within 750-feet

Additional Notifications:

- Interested Parties
- Coalition of Pinnacle Peak (C.O.P.P.)
- Briarwood North Homeowners Association Inc.

Shadey O's

38-UP-2004 & 39-UP-2004

Shadey O's
38-UP-2004 & 39-UP-2004

Attachment #8. Security and Maintenance Plan

The above attachment is on file at the City of
Scottsdale Current Planning office,
7447 E Indian School Road, Suite 105.

PART 2 - REQUIRED PLANS & RELATED DATA

6. TRIP GENERATION COMPARISON: 3 COPIES

**Traffic Related Conditional Use Permit Information
Bar/After Hours Establishment**

1. Shadey O's
2. Site Plan (Attached)
3. 5,711 Sq. Ft.
4. 5,711 Sq. Ft.
5. Same - Shadey O's
6. Hours of Operation:

Monday thru Friday	11:00 am to 2:00 pm
Saturday	11:00 am to 2:00 pm
Sunday	11:00 am to 12:00 pm
7. 280
8. Day 1 hour
Night 1-1/2 hours
9. Kitchen: 10:30am - 4:00pm 1
4:00pm - 12:00pm 1
Bar: 11:00am - 7:00pm 1
7:00pm - 1:00am/2:00am 1
Waitress: 3:00pm - 9:00pm 1
4:00pm - 10:00pm 1
5:00pm - 1:00am/2:00am 1

10. Bar/After Hours Establishment Worksheet

	CUSTOMERS		EMPLOYEES	
	Arrive	Depart	Arrive	Depart
11 AM to 12 AM	5	3	2	0
12 AM to 1 PM	8	5	0	0
1 PM to 2 PM	8	11	0	0
2 PM to 3 PM	3	2	0	0
3 PM to 4 PM	8	4	1	1
4 PM to 5 PM	8	15	3	0
5 PM to 6 PM	20	5	1	0
6 PM to 7 PM	15	5	0	1
7 PM to 8 PM	20	10	0	0
8 PM to 9 PM	10	20	0	0
9 PM to 10 PM	10	15	0	1
10 PM to 11 PM	20	20	0	0
11 PM to 12 PM	20	20	0	0
12 PM to 1 AM	0	20	0	3
1 AM to 2 AM	N/A	N/A	N/A	N/A

